



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

IN REPLY REFER TO:

DIRECTOR'S ORDER NO. 164

Subject: Wetland and Grassland Easement Acquisition Policy

Sec. 1 What is the purpose of this Order? This Order provides land acquisition policy that authorizes the use of administratively determined payments for the acquisition of minimally-restrictive wetland and grassland easements in support of areas designated as "Waterfowl Production Areas." This Order further describes the process for delineating biologically significant wetlands and grasslands, and identifies the methodology for ascertaining the appropriate amount of just compensation for the rights acquired by the United States.

Sec. 2 What is the authority for this policy? The authority for this policy is found in the Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934, as amended by the passage of Public Law 85-585 on August 1, 1958 (16 U.S.C. 718-718j). This policy utilizes the Secretary's legislated authority for all matters pertaining to the Small Wetlands Acquisition Program under the 1958 amendment to the Migratory Bird Hunting and Conservation Stamp Act. The 1958 Act allows the Secretary broad discretion to determine how property rights are acquired. The language in the Act sets forth the requirement to acquire small prairie potholes and interest therein, but is silent on the specific land acquisition details.

Sec. 3 What does this policy impact?

a. This policy impacts the ability of the Service to acquire and protect critical migratory waterfowl breeding habitat as Waterfowl Production Areas (WPA) in the Prairie Pothole Region of the northern Great Plains. The Prairie Pothole Region, located in eastern South Dakota, eastern and northern North Dakota, northeastern Montana, western Minnesota, and north central Iowa, is one of the most important areas for duck reproduction in North America. The Region produces, on average, 50 to 75 percent of the primary species of ducks on the continent. Twelve of the 34 species of North American ducks are common breeders in the region. For seven species—mallard, gadwall, blue-winged teal, northern shoveler, northern pintail, redhead, and canvasback—the Prairie Pothole Region accounts for more than 60 percent of the breeding population. The Region is also a major migration corridor during fall and spring for ducks, geese, and other water birds.

b. This policy impacts the ability of the Service to purchase wetland and grassland easements surrounding temporary and seasonal wetland basins of breeding pair habitat that support the WPA key brood marshes.

c. This policy impacts the amount of consideration that the Service offers to private landowners in exchange for the transfer of property rights which are acquired with minimally-restrictive wetland and grassland easements in the Small Wetland Acquisition Program (SWAP). This policy impacts all counties authorized for WPA acquisition.

d. This policy impacts the easement payment determination for all WPA delineated lands and waters, regardless of their current use or their potential highest and best use.

e. This policy impacts the documentation and reporting requirements for the determination of easement payments in the SWAP.

Sec. 4 Why is this policy being implemented?

a. This policy is being implemented in order to meet critical conservation mandates as set forth in The Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718-718j), as amended, commonly referred to as the "Duck Stamp Act." The Duck Stamp Act requires the acquisition of lands and waters, interests therein, and rights-of-way to provide access to the WPA.

b. This policy is being implemented in order to provide a simple methodology for determining payments for minimally-restrictive wetland and grassland easements in the Prairie Pothole Region of the United States.

c. The acquisition of minimally-restrictive wetland and grassland easements provides significant conservation benefits. However, it has little or no impact on property values. Accordingly, the use of administratively determined payments, as authorized by this policy, will be used in lieu of an appraisal.

Sec. 5 What is a Waterfowl Production Area? A Waterfowl Production Area is any wetland or pothole area acquired pursuant to section 4(c) of the amended Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d(c)), owned or controlled by the United States and administered by the Fish and Wildlife Service as a part of the National Wildlife Refuge System.

Sec. 6 How are Waterfowl Production Areas delineated? The biological determination of the type and amount of wetland and grassland acres to be acquired in the SWAP is a function of the Wetland District Manager. Wetlands and grasslands are delineated using the criteria set forth in the *U.S. Fish and Wildlife Service, Strategic Growth of the Small Wetland Acquisition Program, Guidelines for Fee and Easement Purchase (Region 3)*, and the *U.S. Fish and Wildlife Service Grassland Easement Evaluation Worksheet (Region 6)*. These evaluation criteria are incorporated and made a part of this Order by reference. The Wetland Manager is responsible for preparation and approval of the appropriate delineation diagram with each acquisition proposal. The delineation diagram clearly defines the amount and location of wetlands and grasslands to be acquired.

Sec. 7 What are the types of easements covered by this policy? This policy pertains to the acquisition of minimally-restrictive wetland easements, grassland easements, and habitat

easements. This policy does not address restrictive habitat easements or fee acquisitions. The following provides a brief synopsis of the wetland and grassland legal instruments:

a. Wetland Easements: Permanent conservation easements which protect wetlands include: (1) Palustrine wetlands with water regimes A through U; (2) Lacustrine littoral wetlands; and, (3) Lacustrine limnetic wetlands with association numbers 1 and 2. Such wetlands may be natural, fully restored, or capable of being restored. The size of the wetland area is constrained by the area delineated by the Wetland Manager. These easements utilize wetland easement conveyance documents that restrict the right to ditch, drain, level, fill, and burn the land, and secures the right of ingress and egress by authorized representatives of the United States and the right of access in order to build and maintain water control structures. The wetland easement is used by Region 3 and Region 6. The private landowners retain control over public access to the property.

b. Grassland Easements: Permanent conservation easements that protect and conserve waterfowl production habitat include: sensitive groundwater areas, riparian lands, wetland restoration areas, marginal agricultural cropland areas, pastured hillsides, and woodlots on agricultural land. The land may be used for haying and/or grazing depending on the type of easement instrument used. The size of the grassland area is constrained by the area delineated by the Wetland Manager. The grassland easements acquire the right to maintain the land, right of ingress and egress by authorized representatives of the United States, right to maintain permanent vegetative cover and restrict the alteration of grasslands and wildlife habitat, and the right to restrict haying, mowing, or seed harvesting until after July 15 of each calendar year. The easements included are the habitat easements used by Region 3 and the grassland easement used by Region 6. Hereinafter, grassland and habitat easements are collectively referred to as grassland easements. The private landowners retain control over public access to the property.

Sec. 8 What is the current valuation process that this policy will replace?

a. Since 1971, the Uniform Appraisal Standards for Federal Land Acquisitions (UAS) have provided the guidance and appraisal methodology for nearly all Federal land acquisitions. Since 1987, the Uniform Standards for Professional Appraisal Practice (USPAP) have become the required standards used by all licensed appraisers. The UAS and the USPAP can be used in the payment determination of minimally-restrictive wetland and grassland easements. However, since minimally-restrictive easements acquire very few property rights, appraisals prepared under the auspices of the UAS and the USPAP typically indicate little or no impact on property values and, therefore, little or no value for the placement of a minimally-restrictive easement on the property.

b. Since the inception of the SWAP, it has been apparent that the acquisition of minimally-restrictive wetland easements has little impact on property rights. To meet the legislative mandate to acquire lands and waters for the protection of wetlands in WPAs, the Service currently utilizes a direct percentage of the fee unit value of the property to be encumbered by

the wetland easement in order to determine the easement payment. This method is commonly referred to as the administrative formula.

c. Under the current payment determination, the Division of Realty performs the following steps to determine a wetland easement payment: (1) conventional appraisal is prepared, reviewed and approved; (2) the unit value (dollars per acre) is extracted from the approved appraisal; (3) the unit value is multiplied by a 50-90% factor depending upon the State and the amount of the unit value; and, (4) the result of the previous step is then multiplied by the number of wetland acres to be acquired which results in the final wetland easement payment. This policy replaces the estimate of value as determined through the appraisal process with a figure known as the Adjusted Assessed Land Value of record.

d. The administratively determined payment for wetland easements ranges between \$2,500 and \$20,000 and can sometimes reach as high as \$50,000 per acquisition. In most common easement cases, the cost to prepare and approve a UAS/USPAP compliant appraisal will exceed the final easement payment. This policy sets forth a streamlined payment determination based upon the adjusted assessed land value.

Sec. 9 What is the Adjusted Assessed Land Value ?

a. This policy uses a normalized figure known as the Adjusted Assessed Land Value (AALV). The AALV will be used consistently throughout the SWAP. An analysis of land sales indicates that assessed values of record can represent “market value” by establishing a multiplier through studies in a defined market area. For the purposes of this policy, and to ensure consistency and uniformity, a defined market area should always match the area covered by the assessing entity – for the Prairie Pothole Region the defined market area will be at the county level. The land sales that are used to determine the multiplier will include similar land types (both economic use and geographic and physical aspects) as the lands that are being encumbered. The majority of land sales will include agricultural and pasture land sales. Inappropriate properties that could distort the multiplier will always be excluded (e.g., residential, rural residential, and commercial). Properties that indicate anomalies in the market (sales that are not arm’s length transactions) will also be excluded.

b. By law, counties are required to maintain property value assessments at, or near, 100 percent of “full and true” value. However, the “full and true” value does not usually follow market values. Because of the high correlation between land sales price and assessed value of land sales, the gap between assessed value and market value can be measured using standard statistical analysis. A comparison of the two values produces a reliable multiplier. When this multiplier is taken times the assessed value, a consistent and fairly reliable estimate of “market value” can be replicated—this computed estimate of market value will be known as the Adjusted Assessed Land Value. All of the information needed for computation (sales prices and assessed values) is easily obtainable from county assessor offices. For example, the assessed land value for a property may have a unit value of \$600 per acre. The multiplier for the county may be 1.4. The computed AALV will result in a unit “market value” of \$840. The AALV will provide consistency throughout the entire SWAP while ensuring that payments to landowners are fair and equitable.

Sec. 10 How are the easement payments determined? The easement payments for both wetlands and grasslands utilize the AALV unit value for the subject property. The following indices are to be used in conjunction with the AALV on the wetland and grassland easements. The wetland indices contain the percentages that have been historically used by the Service. The grassland indices contain percentages that have been determined from historical grassland easement payments compared to unencumbered grassland fee value. Both indices recognize and support an acceptable landowner acceptance rate of 45 to 65 percent. While based upon historical sign-up rates and payments, the indices indicate that the payment rates are acceptable to private landowners based upon the encumbrance imposed by the respective easement. As set forth in section 12 of this Order, the Regions will submit their annual acceptance rate as part of the annual reporting requirements. In addition, the Regions will make the necessary recommendations for adjusting the indices if the acceptance rate exceeds 70 percent or drops below 40 percent.

a. Wetland Easements – Payment rates for wetland easements will be based upon the AALV and the wetland index (WI) contained in the following table. Wetland areas include all delineated wetlands regardless of cropping history. This includes Conservation Reserve Program lands and temporary wetlands which are currently being farmed.

$$\text{Wetland Easement Payment} = \text{AALV} * \text{WI} * \text{Number of Wetland Acres}$$

WETLANDS EASEMENT INDEX

AALV/Acre	Wetland Index Expressed as a Percent (WI)		
	North Dakota	South Dakota/Montana	Minnesota
\$800.00+	90	60	60
750.00	85	60	60
700.00	80	60	60
650.00	80	60	60
600.00	75	60	60
550.00	75	60	60
500.00	70	60	60
450.00	70	60	60
400.00	65	60	60
350.00	65	60	60
300.00	60	60	60
250.00	50	50	50
200.00	50	50	50
150.00	50	50	50
100.00	50	50	50

b. Grassland Easements – Payment rates for grassland easements will be based upon the AALV and the grassland index (GI) contained in the following table:

GRASSLAND EASEMENT INDEX

AALV/Acre	Grassland Index Expressed as a Percent (GI)	
	Montana/North Dakota	Minnesota/South Dakota
Less than \$150	25-30	25
\$151-\$250	30-35	25
\$251-\$300	35-40	25
\$301-\$400	40-45	25
\$401-\$500	45-50	25-35
\$501-\$600	50	35-40
\$601-\$700	50	40-50
\$701-\$800	50	50-60
\$801+	50	60

Grassland Easement Payment = AALV * GI * Number of Grassland Acres

Sec. 11 What is the payment schedule preparation and process? The Regional Directors for Regions 3 and 6 are authorized to perform the following with regard to the easement payment schedules:

- a. Document the methodology and analysis used in computing the multipliers for use in determine the AALV;
- b. Prepare the payment schedule to be used for Fiscal Year 2004 using the tables in Section 10 as guides;
- c. Maintain records of ownership and sale information as well as property characteristics and corresponding assessed values of record. The sales and assessor information is to be compiled into sales data binders and the resulting multipliers are to be kept current and available for inspection. These documents are considered a permanent record of the respective Regional Realty Offices and subject to review and evaluation; and
- d. Certify each easement payment calculation prior to signing the Statement of Just Compensation. This certification may be further delegated at the discretion of the respective Regional Director.

Sec. 12 What are the management controls, review and reporting requirements? The Regional Directors for Region 3 and Region 6 are responsible for jointly reviewing the payment schedule on an annual basis. The Regional Directors will submit an annual report to the Washington Office that indicates the extent of program activity in the SWAP with a full and complete analysis and assessment of payment methodology and level of landowner acceptance rates. The assessment will indicate to the Headquarters Office the overall validity and whether the easement indices require revision. The Regional Directors will submit the report, together

with necessary recommendations and adjustments, to the Director for review and approval by October 31 of each Fiscal Year.

Sec. 13 What about ongoing appraisals in the SWAP? All ongoing appraisals for wetland and grassland easements will be completed in their current format. The reports will be forwarded to the Senior Realty Officers for Regions 3 and 6 who are authorized to accept the appraised unit values. All future payment determinations for wetland and grassland easements must utilize the new and simplified AALV and easement indices to determine the final easement payment.

Sec. 14 When is this Order effective? This Order is effective immediately. We will include the contents of this Order in appropriate chapters of the Fish and Wildlife Service Manual. This Order will expire on March 31, 2005, unless amended, superseded or rescinded.

A handwritten signature in black ink, appearing to read "Steve Williams", with a stylized, cursive script.

DIRECTOR

Date: January 27, 2004